IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No.110 of 1994

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH TAX - Applicant(s)
Versus
CHANCHALBEN W/O. HARILAL JAMNADAS - Respondent(s)

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Appearance :
MR TANVISH U BHATT for MR MR BHATT for Applicant No(s).: 1.
SERVED BY RPAD - (N) for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 04/08/2005
ORAL JUDGMENT
(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'B', has referred the following question under Section 27(3) of the Wealth Tax Act, 1957, at the instance of the Commissioner of Wealth-tax.

> "Whether, in law and on facts, the Appellate Tribunal is right in holding that wealth tax cannot be levied on the assessee in respect of any portion of the compensation in excess of her 1/9th share which she had received during the asst. Year in question ?"

2. The Assessment Years are 1975-76 to 1981-82 and the relevant valuation dates are 31st March, 1975 to 31st March, 1981 respectively. The assessee, an individual, was owner of certain immovable property which was thrown in the common hotchpot of a Hindu Undivided Family by a declaration dated 7th August, 1970. A partial partition of the property took place on 18th August, 1970 as a result of which the assessee was allotted 1/9th share of that property. In relation to the said property land acquisition proceedings were taken and on 3rd October, 1970 the assessee wrote to the authority to pay 1/9th share of the compensation to each one of the 9 members of the Hindu Undivided Family. Accordingly, she received 1/9th share. The Wealth Tax Officer, for Assessment Year 1975-76, instead of taxing an amount of Rs.21,411/- brought to tax an amount of Rs.1,71,214/- as being total of amounts standing in names of different members of the HUF. The figures of addition vary for different years.

3. The assessee carried the matter in appeal before the Appellate Assistant Commissioner who, vide his consolidated order dated 11th February, 1987, confirmed the order made by the Assessing Officer. The assessee succeeded in Second Appeal before the Tribunal.

4. Mr.Tanvish U. Bhatt, learned Standing Counsel for the applicant – Revenue, assailed the impugned order of the Tribunal dated 27th February, 1989 to submit that firstly, in Assessment Year 1972-73 the assessee had been called upon to pay capital gains tax on the entire amount of compensation and not restricted to 1/9th share. That secondly, for Assessment Year 1976-77 in Income-tax proceedings, the assessee was charged to tax, on interest on the full amount of compensation, and thirdly, for Assessment Year 1971-72 Gift Tax proceedings had been initiated. However, the assessee had succeeded before the Tribunal in Gift Tax proceedings and it was held that there was no gift of the immovable property. He, therefore, submitted that the immovable property continued to be of the assessee and was converted into a right to receive

compensation when the land was acquired. That such right to receive compensation belonged to the assessee in absence of any valid throwing in the hotchpot of the Hindu Undivided Family in absence of actual transfer, there being no conveyance. Lastly, it was submitted that for Assessment Year 1971-72 to 1974-75 the assessee had been charged to Wealth-tax in identical manner and hence, the order made by the Wealth-tax Officer was correct as the assessee had accepted the Wealth Tax assessments for earlier years.

5. Though served, there is no appearance on behalf of the respondent – assessee.

6. The Tribunal has held that for the Assessment Years under consideration there was no right to compensation because such right to receive compensation had been transferred into money itself. Therefore, there was no question of valuation of any such right to receive compensation. According to the Tribunal, the right to receive compensation stood extinguished when compensation money was paid by the acquiring authority. The Tribunal has further noted the fact that there was evidence on record in the

form of bank slip book mentioning the separate vouchers for payment of compensation to all the 9 members of the Hindu Undivided Family. The Tribunal has stated that the earlier proceedings under the Income-tax Act or the Gift-tax Act would have no bearing for the Assessment Years under consideration, because in fact, the Land Acquisition Officer had paid over different sums of money to different persons and even if they were not members, payment had been made to persons other than the assessee, while the assessee had received only 1/9th share of the total amount of compensation. The Tribunal has further held that merely because the assessee had been subjected to Wealth-tax for Assessment Year 1972-73 to 1974-75 it would not create any liability to tax in the years under consideration if there was no basis for taxing the assessee.

7. The charge of Wealth-tax under the Act is fastened by virtue of provision of Section 3 of the Act. It is provided by the said section that Wealth-tax in respect of the net wealth on the corresponding valuation date is leviable at the rate or rates specified in Schedule. The term “net wealth” has

been defined by Section 2(m) of the Act to mean the amount by which the aggregate value of all the assets, wherever located, belonging to the assessee on the valuation date, exceeds the aggregate value of all the debts owed by the assessee on the valuation date. For the present it is not necessary to refer to the other part of the definition. Therefore, what is material is that an asset must belong to an assessee on the valuation date for the purposes of being included in net wealth for being subjected to charge of Wealth-tax. In the present case, admittedly, the Tribunal has found, as a matter of fact, that the compensation money amounting to 8/9th share has not been received by the assessee. The assessee is not even in possession of the said amount on the valuation date. Once this is the position, there can be no question of bringing to tax an amount which is neither in possession of the assessee nor does it belong to the assessee on the valuation date. The Tribunal was justified in law in holding that there was no right in existence in so far as the assessee was concerned because the compensation money was received on extinguishment of such right to receive compensation.

8. Therefore, in the facts and circumstances of the case, the Tribunal was right in holding that Wealth-tax cannot be levied on the assessee in respect of any portion of the compensation in excess of her 1/9th share which she had received during the Assessment Year in question. The question is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**